

FCC/MELLOW

MAY 13 1999

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)
PROGRESS INTERNATIONAL, L.L.C.)

Transferor,)
)
)
and)

File No. _____)

IXC INTERNATIONAL, INC.)
)
)
Transferee)

Application for Approval Nunc Pro Tunc)
of a Transfer of Control of)
Entity Holding Section 214)
Authorization to Provide)
Telecommunications Services)
Between the United States)
and International Points)

APPLICATION FOR APPROVAL NUNC PRO TUNC OF TRANSFER OF
CONTROL OF ENTITY HOLDING SECTION 214 AUTHORIZATION
TO PROVIDE RESOLD SERVICES BETWEEN
THE UNITED STATES AND INTERNATIONAL POINTS

Pursuant to the rules of the Federal Communications Commission ("FCC"), 47
C.F.R. Part 63, IXC International, Inc. ("IXC International") and Progress International, L.L.C.
("Progress"), through counsel, hereby submit an application for nunc pro tunc approval of a
transfer of control of Progress to IXC International. Progress is authorized under Section 214 of

the Communications Act to provide international telecommunications services on a nondominant basis. IXC International, which is a holding company, is not a common carrier.

IXC International is a subsidiary of IXC Communications, Inc. ("IXC") and IXC Internet Services, Inc. IXC Internet is a wholly owned subsidiary of IXC Communications Services, Inc., which in turn is a wholly owned subsidiary of IXC. IXC's shares of common stock are traded on the NASDAQ Stock Market. Progress is a Texas Limited Liability Company which was formerly composed of two member companies -- Link Net International, Inc. (which was a wholly owned subsidiary of IXC) and Westel International, Inc, each of which held a 50 percent ownership interest. On February 25, 1997, Link Net's interest in Progress was sold to Summer Street, Inc., another wholly owned subsidiary of IXC. Summer Street, Inc. changed its name to IXC International, Inc. on September 4, 1999. Accordingly, Progress' current member companies are IXC International and Westel. It is this transfer of Link Net's membership interest to IXC International, Inc. for which the parties now seek nunc pro tunc approval.

Progress' Section 214 application was filed on January 17, 1997. Progress was granted its Section 214 authorization in an Order, Authorization and Certificate released on July 9, 1999. Due to an oversight, the change in ownership from Link Net to IXC International was not disclosed to the FCC while Progress' Section 214 application was pending. Through this application, the parties seek to remedy the oversight involving the transfer of control of Link Net's membership interest in Progress to IXC International, and accordingly, the parties request that the FCC approve the transfer nunc pro tunc.

Approximately 16 months after Link Net's membership interest was sold to IXC International (then Summer Street), Link Net was merged into IXC Communications Services,

Inc. ("IXC-CSI"), which was known at that time as IXC Long Distance, Inc. Before merging Link Net into IXC Long Distance (now IXC-CSI), the parties filed with the FCC a "Pro Forma Application for Approval of a Merger of Entity Holding Section 214 Authorization to Provide Resold Services Between the United States and International Points" ("Merger Application") in File No. ITC-98-422-TC. The Merger Application was approved on June 11, 1998, and the Link Net merger was consummated on June 16, 1998. When the Link Net merger was contemplated, however, counsel failed to recall that Link Net was one of Progress' member companies. Had counsel made this connection, the fact that Link Net's membership interest in Progress had previously been sold to IXC International would have been discovered, and the parties would have filed this Nunc Pro Tunc application along with the Link Net Merger Application. Again, the parties are seeking to correct this situation with the instant Nunc Pro Tunc application.

None of the entities involved -- IXC International, Link Net, or Progress, sought to conceal the transfer of Link Net's membership interest. Rather, the failure to alert the FCC to the transfer of control at issue was purely unintentional.

The sale of Link Net's membership interest in Progress to IXC International was necessary to provide sufficient funding for Progress to operate as a telecommunications carrier. Because of its corporate structure, Link Net was unable to provide the funds Progress would need for its operations. Accordingly, Link Net's membership interest was sold to an affiliate, IXC International (then Summer Street) for fair market value. IXC International had the resources necessary to adequately capitalize Progress. Thus, the transfer of Link Net's 50 percent ownership interest in Progress was clearly in the public interest because the sole purpose of the transaction was to assist Progress, a new potential competitor in the international marketplace.

The transfer of Link Net's membership interest was from one affiliated company to another -- Link Net and IXC International both had the same ultimate corporate parent, IXC Communications, Inc. The transfer to IXC International has had no effect on how Progress would be operated, other than to ensure that Progress received adequate funding. IXC International and Westel remain Progress' only member companies, each with a 50 percent interest, and Progress continues to operate under its own Section 214 authorization. Accordingly, the public interest has not been and will not be adversely affected by the transfer of control to IXC International of Link Net's membership interest in Progress.

According to the FCC's fee schedule, Fee Code CUT, a check in the amount of \$780.00 is attached.

In support of this request, the following information is submitted as required by Section 63.18 of the Commission's Rules:

- (a) The names and addresses of the Applicants are:

IXC International, Inc.
1122 Capital of Texas Highway South
Austin, Texas 78746
Telephone: (512) 231-5100

Progress International, L.L.C.
1122 Capital of Texas Highway South
Austin, Texas 78746
Telephone: (512) 231-5100

- (b) IXC International is incorporated under the laws of the State of Delaware.

Progress is a limited liability company organized under the laws of the State of Texas.

- (c) Correspondence concerning this Application should be sent to:

James E. Magee, Esq.
Kristie Stokes Hassett, Esq.

Reboul, MacMurray, Hewitt,
Maynard & Kristol
Suite 406
1111 19th Street, N.W.
Washington, D.C. 20036
Telephone: (202) 429-0004
Facsimile: (202) 429-8743

(d) Progress is a nondominant provider of telecommunications services. Progress currently has resale and facilities-based authority to provide international telecommunications services pursuant to the Commission's Order, Authorization and Certificate ("Order") in File No. ITC-97-048, released on July 9, 1997. IXC International is not a common carrier, but is rather a holding company.

(e) Not applicable.

(f) Not applicable.

(g) Not applicable.

(h) Pursuant to Section 63.18(h)(1) of the Commission's Rules, IXC International hereby certifies that it is "affiliated" with a foreign carrier in the United Kingdom, Storm Telecommunications, Limited ("Storm"). IXC International holds a forty percent ownership interest in Storm. Telenor Carrier Services AS also holds a forty percent ownership interest in Storm, and Clarion Resources Communications Corporation holds a ten percent interest. Storm is a competitive international telecommunications carrier, which is incorporated in the United Kingdom. Storm is not a local exchange carrier. Storm, which has switches in London, England and Frankfurt, Germany, began operating in the United Kingdom, Germany, the Netherlands, and France on June 15, 1998. In the future, Storm intends to operate in Austria, Belgium, Italy, Norway, Spain, and Switzerland. Storm is registered in Norway and Switzerland, and has a

license application pending in Austria. Additionally, Progress is affiliated with a foreign carrier in Mexico, MarcaTel, S.A. de C.V. ("Marcatel"). Progress currently holds a 47 percent ownership interest in MarcaTel. MarcaTel is a competitive long distance and international carrier in Mexico. As noted in the Commission's Order granting Progress its Section 214 authorization: "MarcaTel has a limited market share, no market power, and a lack of control over bottleneck services or facilities."

Pursuant to Section 63.18(h)(2) of the Commission's Rules, the ultimate parent corporation of IXC International is IXC Communications, Inc. ("IXC"), which is a publicly held Delaware corporation that supplies telecommunications capacity. IXC's address is 1122 Capital of Texas Highway South, Austin, Texas 78746. Only one shareholder of IXC, General Electric Pension Trust, currently owns more than ten percent of IXC's shares. In regards to the General Electric Pension Trust, no one beneficiary of the pension trust owns ten percent or more of the pension trust and no one beneficiary of the pension trust owns ten percent or more of the IXC stock held by the pension trust. IXC International is not a common carrier subject to the Communications Act, and accordingly, the FCC's interlocking directorate rules are inapplicable.

Pursuant to Section 63.18(h)(3), IXC International certifies that it is not affiliated with any U.S. international carrier whose facilities-based services it proposes to resell.

Pursuant to Section 63.18(h)(5) and (6), IXC International states that the countries in which Storm either operates or intends to operate -- Austria, Belgium, France, Germany, Italy, the Netherlands, Norway, Spain, Switzerland, and the United Kingdom -- are all members of the World Trade Organization. In addition, MarcaTel operates in Mexico, which is also a member of the World Trade Organization.

Pursuant to Section 63.18(h)(8), under Section 63.10(a)(3), Progress should presumptively be treated as a non-dominant carrier. Further, IXC International cannot be a dominant carrier, since it is not a common carrier. Section 63.10(a)(3) provides that if a foreign affiliate lacks a fifty percent market share in the international transport and the local access markets on the foreign end of the route, "the U.S. carrier shall presumptively be classified as non-dominant." Storm, which is affiliated with IXC International, is a relatively new entrant in the international telecommunications market. Thus, Storm has no ability to discriminate against unaffiliated United States carriers. Therefore, Storm lacks sufficient market power in any foreign market to affect competition adversely in the U.S. market. Similarly, MarcaTel, is also a relatively new market entrant, has no market power in Mexico to affect competition adversely in the U.S. market. (See the Commission's Order granting Section 214 authorization to Progress in File No. ITC-97-048.) Accordingly, Progress and IXC International are presumptively non-dominant carriers.

(i) Pursuant to section 63.18(i), IXC International certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possess sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and will not enter into such agreements in the future.

(j) Pursuant to Section 63.18(j), IXC International certifies that no party to this Application, as defined in §§ 1.2001 through 1.2003 of the Commission's rules, is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse of 1988.

(k) Pursuant to Section 63.18(k), IXC International qualifies for streamlined processing of this Application. Section 62.12(c)(1)(i) provides that streamlined processing is

available where the Applicant qualifies for a presumption of non-dominance under Section 63.10(a)(3). As demonstrated above, both Progress and IXC International qualify for a presumption of non-dominance under this section because their affiliates currently lack sufficient market power in the foreign marketplace. Accordingly, this application is entitled to streamlined processing under Section 63.18(k).

The Verification of IXC International is attached hereto as Exhibit "A."

CONCLUSION

In light of the foregoing, IXC International and Progress request that this application be granted.

Respectfully submitted,

IXC INTERNATIONAL, INC.
PROGRESS INTERNATIONAL, L.L.C.

By:



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MAYNARD & KRISTOL
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(202) 429-0004


May 12, 1999

VERIFICATION OF APPLICANT

On behalf of IXC International, Inc. ("IXC International"), and pursuant to Section 1.2001-1.2003 of the Commission's Rules, 47 C.F.R. §§ 1.2001-1.2003, I hereby certify that neither IXC International nor any party to this application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a).

I also certify that the statements made in the foregoing "Application for Approval Nunc Pro Tunc of Transfer of Control of Entity Holding Section 214 Authorization to Provide Resold Services Between The United States and International Points" are true, complete, and correct to the best of my knowledge and are made in good faith.

IXC INTERNATIONAL, INC.

By: 
Jeffrey C. Smith
Senior Vice President,
General Counsel & Secretary

Date: May 11, 1999